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No. 06-1476

IN THE

SUPREME COURT OF THE UNITED STATES

TYRONE DUFF,
Petitioners,

vs.

STATE OF NEVADA, ET.AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit

PETITION FOR REHEARING

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PETITION FOR REHEARING

I. INTRODUCTION

Pursuant to Supreme Court Rule 44.2 petitioner Tyrone Duff petitions the Court for rehearing on its decision entered October 1, 2007, that denied his petition for writ of certiorari and upheld the Ninth Circuit's decision that conflicts with the existing decision by the Second Circuit in *Maestri v. Jutkofsky* on the same matter of 'jurisdiction' and terminated the petitioner's Constitutional and Civil Rights by declaring him a *vexatious litigant*.

II. ARGUMENT

Rehearing is warranted on the Supreme Court's decision, entered October 1, 2007, that upheld the Ninth Circuit's decision that assumed authority outside the territorial boundaries of its office in the State of New York, which is the jurisdiction of the Second Circuit. This indisputably conflicted with the Court's prior decision, entered February 21, 1989 that upheld the existing authoritative decision by Second Circuit on the same important matter of 'jurisdiction' in *Maestri v. Jutkofsky*, 850 F.2d 50, 53 (2nd Cir. 1988)[*28] cert. denied, 489, U.S. 1016, 109 S.Ct. 1132, 103 L.Ed. 2d 193 (1989). *Maestri* roughly analogous to the instant case, where the Court held that the judge did not have absolute immunity because the judge acted in clear violation of all subject matter jurisdiction by causing an arrest of a citizen in a neighboring jurisdiction and makes it clear there is a difference between an action that is 'erroneous' or even in 'excess of jurisdiction' and one that is in the 'clear absence of all jurisdiction' over the subject matter, which absolute immunity is unavailable. See *Atkinson-Baker & Assoc. v. Kolts*, 7 F.3d 1452 at 1454 (9th Cir. 1993); *Mireles v. Waco*, 502 U.S. 9, 12 (1991); *Forrest v. White*, 484 U.S. 227, 228 (1988).

Justices Stevens, Scalia and Kennedy were sitting justices on the Court's prior decision and knew when the Court upheld the Ninth Circuit's decision without overruling *Maestri*, the Court entered two (2) conflicting decision of case law by two (2) Circuit Courts on the same important matter of 'jurisdiction', setting fraudulent case law

and a false precedent that can be cited in deciding similar cases, which substantially effects the integrity and creditability of the Supreme Court of the United States. See *Bulloch v. United States*, 763 F.2d 1115, 1121 (10th Cir. 1985); *Hazel-Atlas Glass Co. v. Hartford- Empire Co.*, 322 U.S. 238, 245-246 (1944).

The Ninth Circuit's decision is a 'usurpation of power' that conferred jurisdiction where none existed (*People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86 92 52 N.E. 2d 255 (1943); *Old Wayne Mut. L. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct. 236 (1907)), when it permanently enforced a Nevada State Court's blanket restraining order against the petitioner in the State of New York, which conflicts with the existing decision by the Second Circuit on the same important matter of 'jurisdiction' in *Maestri*. See *Tucker v. Outwater*, 118 F.3d 930, 932-933 (2d Cir. 1997); *James v. Borg*, 24 F.3d 20, 24 (9th Cir.), cert. denied, 115 S.Ct. 333 (1994); *Gray v. Raines*, 662 F.2d 569, 571 (9th Cir. 1991); *People v. McCarty*, 94 Ill. 2d 37 (1983); *Cole v. Arkansas*, 333 U.S. 196 (1948).

The Supreme Court upheld the Ninth Circuit's decision that not only upheld its encroachment in the jurisdiction of the Second Circuit but declared the petitioner a *'vexatious litigant'*, barring him from ever exercising his Constitutional Rights to proceed with a legal action provided under federal law to remove the State of Nevada's unlawful restraint against him, now over fourteen (14) years, in the State of New York (*Kelcup v. McManus* (1964) 2d 771, 394 P. 2d 375, 379), which conflicts with the Court's decision, entered February 21,

1989 that upheld the Second Circuit's decision in *Maestri*. See *Board of the County Commissioners of Bryan County, Oklahoma v. Brown*, 520 U.S. 397 (1997); *Adickes v. S.H. Kress & Co.*, 398 U.S. 144 (1970); *42 U.S.C. §1983*. The authority of every tribunal is necessary restricted by the territorial limits of the State in which it is established. Any attempt to exercise authority beyond those limits would be deemed in every other forum, as has been by this court, an illegitimate assumption of power. *Pennoyer v. Neff* 95 U.S. 714 (1877); *Stump v. Sparkman*, 435 U.S. 349 (1978); *King v. Love*, 766 F.2d 962 (6th Cir. 1985); *Ashelman v. Pope*, 793, F.2d 1075 (9th Cir.1986).

This case now calls for an exercise of the Supreme Court supervisory power to compel the Ninth Circuit to act within the jurisdiction of the territorial boundaries of its office and prohibit it from acting outside its jurisdiction and reverse its extrajurisdictional acts in its decision, where it has now encroached in the jurisdiction of the Second Circuit, which conflicts with the Court's decision, entered February 21, 1989 that upheld the existing decision by the Second Circuit on the same important matter of 'jurisdiction' in *Maestri*. See *Rowe v. Fort Lauderdale*, 2002 U.S. App. 885, *19n. 10, 15Fla. Weekly Fed. At C241 n. 10 (11th Cir. 2002). The Court must uphold the Constitution and Rule of Law, without respect to persons and vacate its decision, entered October 1, 2007, as unconstitutional and uphold the Second Circuit's decision in *Maestri*. See *Marbury v. Madison*, 1 Cranch 137 (1803).

It is not the Supreme Court's position to act with respect to persons, but to uphold to the best of its ability at all times in all cases coming before it, the Constitution and the Rule of Law without respect to persons, in order for justice to prevail, foranything less is an obstruction of justice. Should the Supreme Court continue to refuse to uphold the Constitution and the Rule of Law without respect to persons and its own case law in *Maestri*, the petitioner will have no other recourse but to address this entire matter before the House Judiciary Committee, where the geographic and/or territorial boundaries of the jurisdiction of the federal courts can only be changed by an act of Congress.

III. CONCLUSION

Based on the intervening circumstances set forth herein, the petitioner respectfully request that his petition for rehearing be granted.

Respectfully submitted,

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Certification of Counsel (Rule 44.2)

Pursuant to Rule 44.2 of the Rules of the Supreme Court of the United States, I hereby certify that the instant petition for rehearing is restricted to the grounds specific in this paragraph and it is presented in good faith and not for delay.

Dated:

/s/ _____
Tyrone Duff
Counsel of Record for Petitioner